

Carl Warring
Assistant Attorney General
1116 West Riverside Avenue, Suite 100
Spokane, WA 99201-1106
(509) 456-3123

Honorable Salvador Mendoza, Jr.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

ROBERT P. TODD, a single person,

NO. 15-00236 SMJ

Plaintiff,

DEFENDANTS' ANSWER AND JURY DEMAND

V.

STATE OF WASHINGTON,
WASHINGTON STATE
PATROL, DETECTIVE MAJOR
BAMBINO, DETECTIVE
TONY DOUGHTY,
DETECTIVE JERRY WALKER,
DETECTIVE SGT. JESSE
REGALADO, DETECTIVE
JEFF KERSHAW, JOHN
DOE(S),

Defendants.

Defendants, STATE OF WASHINGTON, WASHINGTON STATE PATROL, DETECTIVE MAJOR BAMBINO, DETECTIVE TONY DOUGHTY, DETECTIVE JERRY WALKER, DETECTIVE SGT. JESSE

1 REGALADO, and DETECTIVE JEFF KERSHAW, in answer to Plaintiff's
2 complaint, admit, deny and allege as follows:

3 **I. INTRODUCTION**

- 4 1.1 The allegation is a description of the cause of action, not a short, plain
5 statement demonstrating the Plaintiff is entitled to relief and therefore
6 no answer is required. To the extent and answer is deemed necessary,
7 the Defendants deny any wrongdoing and/or that the Plaintiff is entitled
8 to any relief whatsoever.
- 9 1.2 The allegation is a description of the cause of action, not a short, plain
10 statement demonstrating the Plaintiff is entitled to relief and therefore
11 no answer is required. To the extent and answer is deemed necessary,
12 the Defendants deny any wrongdoing and/or that the Plaintiff is entitled
13 to any relief whatsoever.

14 **II. JURISDICTION AND VENUE**

- 15 2.1 The allegation is a description of the cause of action, not a short, plain
16 statement demonstrating the Plaintiff is entitled to relief and therefore
17 no answer is required. To the extent and answer is deemed necessary,
18 the Defendants deny any wrongdoing and/or that the Plaintiff is entitled
19 to any relief whatsoever.
- 20 2.2 The allegation is a description of the cause of action, not a short, plain
21 statement demonstrating the Plaintiff is entitled to relief and therefore

1 no answer is required. To the extent and answer is deemed necessary,
2 the Defendants deny any wrongdoing and/or that the Plaintiff is entitled
3 to any relief whatsoever.

4 2.3 Admitted in part, denied in part. Defendants admit that the search at
5 issue in this case occurred in Pend Oreille County. Any allegation or
6 inference from an allegation not specifically admitted is denied.

7 2.4 Admitted. The State of Washington and Washington State Patrol are
8 state entities.

9 2.5 Admitted in part, denied in part. Each of the named defendants was an
10 employee of the Washington State Patrol at the times relevant to this
11 lawsuit. Any allegation or inference from an allegation not specifically
12 admitted is denied.

13 2.6 Denied.

14 **III. PARTIES**

15 3.1 Admitted.

16 3.2 Admitted in part, denied in part. The State of Washington is a state
17 government entity and through various state agencies operates in Pend
18 Oreille County. Any allegation or inference from an allegation not
19 specifically admitted is denied.

20 3.3 Admitted.

21 3.4 Admitted in part, denied in part. Each of the named defendants was an

employee of the Washington State Patrol at the times relevant to this lawsuit. Any allegation or inference from an allegation not specifically admitted is denied.

**IV. CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
CONSTITUTIONAL RIGHTS**

- 4.1 Denied.
 - 4.2 Denied.
 - 4.3 The allegation calls for a conclusion of law and therefore no answer is required.
 - 4.4 The allegation calls for a conclusion of law and therefore no answer is required.
 - 4.5 Denied.
 - 4.6 The allegation calls for a conclusion of law and therefore no answer is required.
 - 4.7 The allegation calls for a conclusion of law and therefore no answer is required.
 - 4.8 The allegation calls for a conclusion of law and therefore no answer is required.
 - 4.9 Denied.
 - 4.10 The allegation calls for a conclusion of law and therefore no answer is required.

1 **V. CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
2 CONSTITUTIONAL RIGHTS PURSUANT TO WASHINGTON
3 STATE'S CONSTITUTION**

4 5.1 Denied.

5 5.2 Denied.

6 5.3 The allegation calls for a conclusion of law and therefore no answer is
7 required.

8 5.4 The allegation calls for a conclusion of law and therefore no answer is
9 required.

10 5.5 Denied.

11 5.6 The allegation calls for a conclusion of law and therefore no answer is
12 required.

13 5.7 The allegation calls for a conclusion of law and therefore no answer is
14 required.

15 5.8 The allegation calls for a conclusion of law and therefore no answer is
16 required.

17 5.9 Denied.

18 5.10 The allegation calls for a conclusion of law and therefore no answer is
19 required.

20 5.11 Denied.

21 **VI. CAUSE OF ACTION FOR CONSPIRACY TO DEPRIVE PERSON
22 OF EQUAL PROTECTION OF LAW**

23 6.1 Denied.

- 6.2 Denied.
- 6.3 The allegation calls for a conclusion of law and therefore no answer is required.
- 6.4 The allegation calls for a conclusion of law and therefore no answer is required.
- 6.5 Denied.
- 6.6 The allegation calls for a conclusion of law and therefore no answer is required.
- 6.7 The allegation calls for a conclusion of law and therefore no answer is required.
- 6.8 The allegation calls for a conclusion of law and therefore no answer is required.
- 6.9 The allegation calls for a conclusion of law and therefore no answer is required.
- 6.10 Denied.
- 6.11 The allegation calls for a conclusion of law and therefore no answer is required.
- 6.12 The allegation calls for a conclusion of law and therefore no answer is required.
- 6.13 Denied.

1 **VII. CAUSE OF ACTION FOR VIOLATION OF THE WASHINGTON
2 STATE CIVIL RIGHTS ACT RCW 49.60.030**

3 7.1 Denied.

4 7.2 Denied.

5 7.3 The allegation calls for a conclusion of law and therefore no answer is
6 required.

7 7.4 The allegation calls for a conclusion of law and therefore no answer is
8 required.

9 7.5 Denied.

10 7.6 The allegation calls for a conclusion of law and therefore no answer is
11 required.

12 7.7 The allegation calls for a conclusion of law and therefore no answer is
13 required.

14 7.8 The allegation calls for a conclusion of law and therefore no answer is
15 required.

16 7.9 Denied.

17 7.10 Denied.

18 7.11 Denied.

19 7.12 The allegation calls for a conclusion of law and therefore no answer is
20 required.

21 7.13 The allegation calls for a conclusion of law and therefore no answer is
22 required.

1 7.14 Denied.

2 **VIII. CAUSE OF ACTION FOR MALICIOUS INJURY TO PROPERTY**

3 8.1 Denied.

4 8.2 Denied.

5 8.3 The allegation calls for a conclusion of law and therefore no answer is
6 required.

7 8.4 Denied.

8 8.5 The allegation calls for a conclusion of law and therefore no answer is
9 required.

10 8.6 The allegation calls for a conclusion of law and therefore no answer is
11 required.

12 8.7 The allegation calls for a conclusion of law and therefore no answer is
13 required.

14 8.8 Denied.

15 8.9 Denied.

16 8.10 Denied.

17 **IX. CAUSE OF ACTION PURSUANT TO AGENCY THEORY**

18 9.1 Denied.

19 9.2 Denied.

20 9.3 The allegation calls for a conclusion of law and therefore no answer is
21 required.

9.4 The allegation calls for a conclusion of law and therefore no answer is required.

9.5 Denied.

9.6 The allegation calls for a conclusion of law and therefore no answer is required.

9.7 The allegation calls for a conclusion of law and therefore no answer is required.

9.8 The allegation calls for a conclusion of law and therefore no answer is required.

9.9 Denied.

9.10 Denied.

9.11 The allegation calls for a conclusion of law and therefore no answer is required.

9.12 Denied.

9.13 The allegation calls for a conclusion of law and therefore no answer is required.

X. CAUSE OF ACTION PURSUANT TO THE DOCTRINE OF RESPONDEAT SUPERIOR

10.1 Denied.

10.2 Denied.

10.3 The allegation calls for a conclusion of law and therefore no answer is required.

1 10.4 Denied.
2 10.5 Denied.
3 10.6 The allegation calls for a conclusion of law and therefore no answer is
4 required.
5 10.7 The allegation calls for a conclusion of law and therefore no answer is
6 required.
7 10.8 The allegation calls for a conclusion of law and therefore no answer is
8 required.
9 10.9 Denied.
10 10.10 Denied.
11 10.11 The allegation calls for a conclusion of law and therefore no answer is
12 required.
13 10.12 Denied.
14 10.13 The allegation calls for a conclusion of law and therefore no answer is
15 required.
16 **XI. CAUSE OF ACTION FOR NEGLIGENT TRAINING**
17 11.1 Denied.
18 11.2 Denied.
19 11.3 The allegation calls for a conclusion of law and therefore no answer is
20 required.
21 11.4 Denied.
22

11.5 Denied.

11.6 The allegation calls for a conclusion of law and therefore no answer is required.

11.7 The allegation calls for a conclusion of law and therefore no answer is required.

11.8 The allegation calls for a conclusion of law and therefore no answer is required.

11.9 Denied.

11.10 Denied.

11.11 The allegation calls for a conclusion of law and therefore no answer is required.

11.12 The allegation calls for a conclusion of law and therefore no answer is required.

11.13 Denied.

11.14 The allegation calls for a conclusion of law and therefore no answer is required.

XII. CAUSE OF ACTION FOR NEGLIGENT TRAINING

12.1 Denied.

12.2 Denied.

12.3 The allegation calls for a conclusion of law and therefore no answer is required.

1 12.4 Denied.
2 12.5 Denied.
3 12.6 The allegation calls for a conclusion of law and therefore no answer is
4 required.
5 12.7 The allegation calls for a conclusion of law and therefore no answer is
6 required.
7 12.8 The allegation calls for a conclusion of law and therefore no answer is
8 required.
9 12.9 Denied.
10 12.10 Denied.
11 12.11 The allegation calls for a conclusion of law and therefore no answer is
12 required.
13 12.12 Denied.
14 12.13 Denied.
15 12.14 The allegation calls for a conclusion of law and therefore no answer is
16 required.
17 12.15 The allegation calls for a conclusion of law and therefore no answer is
18 required.

19 **XIII. CAUSE OF ACTION FOR NEGLIGENT SUPERVISION**

20 13.1 Denied.
21 13.2 Denied.
22

1 13.3 The allegation calls for a conclusion of law and therefore no answer is
2 required.
3 13.4 Denied.
4 13.5 Denied.
5 13.6 The allegation calls for a conclusion of law and therefore no answer is
6 required.
7 13.7 The allegation calls for a conclusion of law and therefore no answer is
8 required.
9 13.8 The allegation calls for a conclusion of law and therefore no answer is
10 required.
11 13.9 Denied.
12 13.10 Denied.
13 13.11 The allegation calls for a conclusion of law and therefore no answer is
14 required.
15 13.12 Denied.
16 13.13 The allegation calls for a conclusion of law and therefore no answer is
17 required.
18 13.14 The allegation calls for a conclusion of law and therefore no answer is
19 required.
20 13.15 The allegation calls for a conclusion of law and therefore no answer is
21 required.
22

XIV. RELIEF SOUGHT

- 14.1 The allegation is a prayer for relief and therefore no answer is required.
 - 14.2 The allegation is a prayer for relief and therefore no answer is required.
 - 14.3 The allegation is a prayer for relief and therefore no answer is required.
 - 14.4 The allegation is a prayer for relief and therefore no answer is required.
 - 14.5 The allegation is a prayer for relief and therefore no answer is required.
 - 14.6 The allegation is a prayer for relief and therefore no answer is required.
 - 14.7 The allegation is a prayer for relief and therefore no answer is required.
 - 14.8 The allegation is a prayer for relief and therefore no answer is required.
 - 14.9 The allegation is a prayer for relief and therefore no answer is required.
 - 14.10 The allegation is a prayer for relief and therefore no answer is required.

XV. AFFIRMATIVE DEFENSES

6 By Way of FURTHER ANSWER and FIRST AFFIRMATIVE
7 DEFENSE, Defendants allege:

8 1. SERVICE OF PROCESS - The summons and complaint were never
9 properly served upon Defendants.

10 2. VENUE - The county in which this action was commenced is not the
11 proper venue for said action. Venue is most appropriate before the Eastern
12 District of Washington Federal District Court.

13 3. JURISDICTION – The Eastern District of Washington Federal
14 District Court is the proper jurisdiction for the claims alleged in this suit.

15 4. COMPARATIVE FAULT - The injuries and damages, if any,
16 claimed by Plaintiff were proximately caused or contributed to by the fault of
17 Plaintiff as defined by RCW 4.22.015.

18 5. FAILURE TO STATE A CLAIM - Plaintiff has failed to state a
19 claim upon which relief may be granted.

20 6. QUALIFIED IMMUNITY - The claims alleged under 42 U.S.C. §
21 1983 against the state employees are barred by the doctrine of qualified immunity.

The state law claims against the state employees are barred by state law qualified immunity.

7. COMMISSION OF A FELONY - This action is barred as provided by RCW 4.24.420 on the basis that Plaintiff was engaged in the commission of a felony at the time of the injury/death and the felony was a proximate cause of the injury or death.

WHEREFORE, Defendants pray that Plaintiff's complaint be dismissed with prejudice and that Plaintiff take nothing by his complaint and that Defendants be allowed their costs and reasonable attorney fees herein.

In the event this case proceeds to trial, the Defendants for whom this answer is filed demand that this case be tried to a jury.

DATED this 21st day of September, 2015.

ROBERT W. FERGUSON
Attorney General

s/Carl P. Warring
CARL WARRING
WSBA No. 27164
Assistant Attorney General
Attorney for Defendants State Of
Washington, Washington State Patrol,
Detective Major Bambino, Detective Tony
Doughty, Detective Jerry Walker,
Detective Sgt. Jesse Regalado, Detective
Jeff Kershaw
1116 W Riverside, Suite 100
Spokane, WA 99201
(509) 456-3123
carlw@atg.wa.gov

PROOF OF SERVICE

I certify that I electronically filed the above document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Douglas D. Phelps phelps@phelpslaw1.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 21st day of September, 2015, at Spokane, Washington.

ROBERT W. FERGUSON
Attorney General

s/Carl P. Warring
CARL WARRING
WSBA No. 27164
Assistant Attorney General
Attorney for Defendants State Of
Washington, Washington State Patrol,
Detective Major Bambino, Detective Tony
Doughty, Detective Jerry Walker,
Detective Sgt. Jesse Regalado, Detective
Jeff Kershaw
1116 W Riverside, Suite 100
Spokane, WA 99201
(509) 456-3123
carlw@atg.wa.gov